

October 27, 2016

VIA HAND-DELIVERY

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**Re: Dakota Access, LLC - Case No. PU-14-842
Response to Commission Inquiry,
Notification of Unanticipated Discovery,
and Notification of Route Adjustment
under N.D.C.C. § 49-22-16.3(1)**

Dear Mr. Nitschke:

Keitu Engineers & Consultants, Inc. (“Keitu”) conducted a site inspection for the Dakota Access Pipeline Project (“Project”) on October 21, 2016. The report prepared in conjunction with the site inspection included reference to an unanticipated discovery and a route adjustment. The North Dakota Public Service Commission (“Commission”) has requested additional information from Dakota Access, LLC (“Dakota Access”) to clarify the information contained in the report regarding the unanticipated discovery and route adjustment.

The unanticipated discovery occurred on October 17, 2016, when a third-party cultural resource monitor was conducting a cursory inspection of the Project workspace in coordination with clearing and grade activities in Morton County, North Dakota. Following the discovery, the monitor immediately notified the Environmental Inspector for the Project. The Project Archaeologist was also dispatched to the area to conduct a formal assessment of the find.

The find was thoroughly investigated in close coordination with the archaeological Principal Investigator, and included photo-documentation, mapping of all surface features, delineation of site boundaries based on distribution of artifacts and features, and the excavation of seventeen (17) shovel probes.

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The shovel probes identified degrading sediments across the landform that consisted of a thin veneer of dirt near the northeastern portion of the site with a low likelihood for buried cultural deposits. However, based on the presence of multiple cairns in close context with Knife River flint artifacts, the Principal Investigator recommended avoidance of the property. Additional information regarding the discovery is set forth in the Unanticipated Discovery Notification accompanying this letter, which includes privileged and confidential information not suitable for public distribution.

Following the assessment noted above, the location data for the site was provided to Dakota Access construction and engineering staff to aid in the design of a reroute to avoid impacts. An avoidance route to avoid impacts to the discovery was designed and submitted to the North Dakota State Historic Preservation Office ("SHPO") for review and approval. The attached Unanticipated Discovery Notification is the professional examination report filed with SHPO requesting such concurrence. By letter dated October 18, 2016, SHPO concurred with the information found in the Unanticipated Discovery Notification and the plans of Dakota Access to avoid any impacts.

The discovery was made far enough in advance that the construction crews were not stalled. As noted, Dakota Access has adjusted the centerline within the approved corridor to avoid any impacts to cultural resources. Proper notification of the route adjustment under North Dakota Century Code Section 49-22-16.3(1) is also provided herewith.

With respect to status of the Project in the area, grading is complete. Dakota Access has not commenced ditching operations for the Project. Dakota Access has moved grade crews past the site because law enforcement needed all crews within a certain distance of Highway 1806 no later than the morning of October 26, 2016 for safety reasons. Dakota Access has not yet welded the pipe, but welding crews are nearing this area.

The delay in providing notification to the Commission regarding the unanticipated discovery is a result of the find occurring simultaneously with Dakota Access officials coordinating an on-site visit for various officials, including Congressman Kevin Cramer, Standing Rock Sioux Chairman David Archambault, U.S. Corps of Engineers Omaha District Commander Col. John Henderson, Standing Rock Sioux Tribal Historic Preservation Officer John Eagle, North Dakota State Historic Preservation Officer Paul Picha, Cheyenne River Sioux archaeologists, and other tribal cultural and historical specialists. Dakota Access ensured the Unanticipated Discovery Plan protocols were followed, and did not intentionally delay providing notification to the Commission. All requirements of Certification Relating to Order Provision number 12 regarding unanticipated discoveries have now been satisfied, and Dakota Access requests clearance to proceed with construction for the Project.

The Commission has also inquired as to specific details regarding the reroute noted in Keitu's report. The unanticipated discovery will necessitate a reroute under North Dakota Century Code Section 49-22-16.3(1) to avoid any cultural resources. To that end, the appropriate notification of the Route Adjustment with corresponding documentation is provided as follows:

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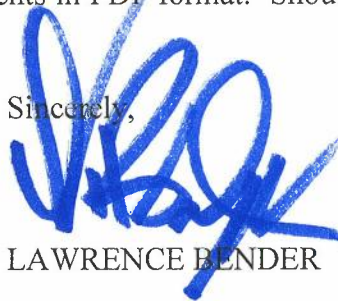
- Certification of Joey Mahmoud, with accompanying exhibits:
 - Exhibit A: Dakota Access Reroute Location Map;
 - Exhibit B: Landowner Information;
 - Exhibit C: Environmental Crossing Analysis for Reroute Location 132 and Exclusion and Avoidance Criteria Analysis for Reroute Location 132;
 - Exhibit D: Dakota Access Pipeline Project, Unanticipated Discovery Notification, Morton County, North Dakota – PRIVILEGED AND CONFIDENTIAL; and
 - Exhibit E: SHPO Concurrence Letter

- Certificate of Service

As noted, SHPO has concurred the route adjustment will avoid any impacts to the recent unanticipated discovery. Further, no known exclusion or avoidance areas, as defined in North Dakota Administrative Code §§ 69-06-08-02(1) and (2), will be affected by construction activities associated with the route adjustment. All construction activities will be within the previously designated corridor.

The requisite eleven (11) copies of all documents are included herewith. Also enclosed is a CD containing the above-referenced documents in PDF format. Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/dmk
Enclosures

cc: Zack Pelham (*via e-mail*)
Julie Prescott (*via e-mail*)

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